



Jul 31 2009  
7:08PM

July 31, 2009

*Via email and Hand Delivery*

Hon. Shira Scheindlin  
United States District Judge  
U.S. District Court, Southern District of New York  
500 Pearl Street, Room 1620  
New York, New York 10007

Re: *City of New York v. Exxon Mobil*  
Preliminary Jury Instructions

Dear Judge Scheindlin:

I write concerning three matters relating to the Court's preliminary instructions. First, we believe the Court's preliminary remarks to the jury should clarify the relationship among the three Exxon Mobil defendants, as well as between heritage Exxon, heritage Mobil, and Exxon Mobil. We suggest the following:

There are three defendants in this case: Exxon Mobil Corporation, ExxonMobil Oil Corporation, and Mobil Corporation. For convenience we will refer to these as "ExxonMobil."

Likewise, you will hear references to "Exxon" and "Mobil" as well as "ExxonMobil." This is because in November 1999, Exxon and Mobil merged to form Exxon Mobil Corporation.

Second, we suggest that Your Honor add the following preliminary instruction concerning the bellwether nature of this trial:

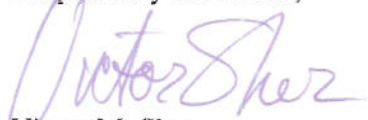
You may hear references during this trial to City wells other than the wells that make up Station 6. These other wells may (or may not) allegedly contain MTBE and/or other contaminants. I have directed that this trial focus on Station 6, and so unless I instruct you otherwise you should not speculate or be concerned about other wells.

Finally, Your Honor has said you would give a preliminary instruction concerning entities not present in the courtroom whose conduct may bear on MTBE-related issues. (*See* Ct. Rptr. Tr. At 40-41 (Jul. 15, 2009).) We understand that you may have some standard language, but without seeing that we propose the following language on this point:

You are not to speculate why Exxon Mobil is the only defendant in this case. Issues involving other companies involved with MTBE are being dealt with in other proceedings.

I proposed these approaches to these three issues this morning by email to Mr. Sacripanti, who said he would get back to me over the weekend. (A copy of our email correspondence is attached.) We may or may not be able to agree to some or all of these issues. In either case, I wanted to alert the Court to them now in anticipation of discussing them at an appropriate time Monday or Tuesday.

Respectfully submitted,



Victor M. Sher

Cc: Peter Sacripanti  
All counsel via LNFS



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# Exhibit A

## Aerin Hong

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**From:** Sacripanti, Peter [psacripanti@mwe.com]  
**Sent:** Friday, July 31, 2009 12:33 PM  
**To:** Vic Sher  
**Cc:** Pardo, James; Robert Chapman  
**Subject:** Re: Preliminary instructions

Vic

Thanks for your email. My schedule does not allow me to meet your scheduling demands. Since the court will not instruct the jury until Tuesday or even Wednesday I suggest you may want to give us little more time to discuss. I suggest we get back to you over the weekend. However if you feel the need to submit today no less than 1:30, please feel free and we will respond accordingly.

----- Original Message -----

**From:** Vic Sher <vshe@sherleff.com>  
**To:** Sacripanti, Peter  
**Cc:** Pardo, James; Robert Chapman <rchapman@greenbergglusker.com>  
**Sent:** Fri Jul 31 10:53:19 2009  
**Subject:** Preliminary instructions

Peter,

There are three matters relating to the Court's preliminary instructions on which I'd appreciate your thoughts:

First, I think we both would like the court's preliminary remarks to the jury to clarify the relationship among the three Exxon Mobil defendants, as well as between heritage Exxon, heritage Mobil, and Exxon Mobil. I suggest the following:

There are three defendants in this case: Exxon Mobil Corporation, ExxonMobil Oil Corporation; and Mobil Corporation. For convenience we will refer to these as "ExxonMobil."

Likewise, you will hear references to "Exxon" and "Mobil" as well as "ExxonMobil." This is because in November 1999, Exxon and Mobil merged to form Exxon Mobil Corporation.

Second, we suggest that Her Honor add the following preliminary instruction concerning the bellwether nature of this trial:

You may hear references during this trial to City wells other than the wells that make up Station 6. These other wells may (or may not) allegedly contain MTBE and /or other



contaminants. I have directed that this trial focus on Station 6, and so unless I instruct you otherwise you should not speculate or be concerned about other wells.

Finally, the Court has said she would give a preliminary instruction concerning entities not present in the courtroom whose conduct may bear on MTBE-related issues. Judge Scheindlin said she had some standard language, but without seeing that we propose the following language on this point:

You are not speculate why Exxon Mobil is the only defendant in this case. Issues involving other companies involved with MTBE are being dealt with in other proceedings.

I would of course prefer to submit language on which we agree. I intend to send a request to the Court about these three preliminary instructions by 1:30 pm today.

Vic

Victor M. Sher

Sher Leff LLP

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San Francisco, CA 94105

415/348-8300 x 100

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